

AMENDED IN SENATE JULY 11, 2013

AMENDED IN SENATE JUNE 19, 2013

AMENDED IN ASSEMBLY APRIL 11, 2013

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 389

Introduced by Assembly Member Williams

February 15, 2013

An act to amend Sections 44237 and 56366.1 of the Education Code, relating to private schools.

LEGISLATIVE COUNSEL'S DIGEST

AB 389, as amended, Williams. Private schools: employees: criminal background checks.

(1) Existing law sets forth a method for providing special education and related services to pupils with exceptional needs. Existing law also permits, under certain circumstances, contracts to be entered for the provision of those services by nonpublic, nonsectarian schools or agencies, as defined. Existing law authorizes a master contract for special education and related services provided by a nonpublic, nonsectarian school or agency only if the school or agency has been certified by the Superintendent of Public Instruction as meeting specified standards. Existing law requires the Superintendent, before certification, to conduct an onsite review of the facility and program seeking certification, as provided. Existing law further requires the Superintendent to conduct an investigation of a nonpublic, nonsectarian school or agency onsite at any time without prior notice if there is

substantial reason to believe that there is an immediate danger to the health, safety, or welfare of a child, as provided.

This bill would authorize the Superintendent, when conducting an onsite review or investigation, to verify that the nonpublic, nonsectarian school or agency has received a successful criminal background check clearance and has enrolled in subsequent arrest notice service, as specified, for each owner, operator, and employee of the nonpublic, nonsectarian school or agency.

(2) Existing law requires every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level to require each applicant for employment in a position requiring contact with minor pupils who does not possess a valid California state teaching credential, or is not currently licensed by another state agency that requires a criminal record summary, to submit 2 sets of fingerprints to the Department of Justice for the purpose of obtaining a criminal record summary from the Department of Justice and the Federal Bureau of Investigation. Existing law requires a recipient of the summary to not disclose its contents or provide copies of the information, and requires the information received to be destroyed upon hiring.

This bill would delete the exemption for applicants possessing a valid California state teaching credential or who are currently licensed by another state agency that requires a criminal record summary, from submitting 2 sets of fingerprints for the purpose of obtaining a criminal record summary from the Department of Justice and the Federal Bureau of Investigation. The bill would, notwithstanding the restrictions on sharing and destroying criminal background check information, require a nonpublic, nonsectarian school or agency, upon demand, to make available to the Superintendent evidence of a successful criminal background check clearance and enrollment in subsequent arrest notice service, as provided, for each owner, operator, and employee of the nonpublic, nonsectarian school or agency. The bill would require the nonpublic, nonsectarian school or agency to retain the evidence, as specified. The bill also would make technical, nonsubstantive changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 44237 of the Education Code is amended
2 to read:

3 44237. (a) Every person, firm, association, partnership, or
4 corporation offering or conducting private school instruction on
5 the elementary or high school level shall require each applicant
6 for employment in a position requiring contact with minor pupils
7 to submit two sets of fingerprints prepared for submittal by the
8 employer to the Department of Justice for the purpose of obtaining
9 criminal record summary information from the Department of
10 Justice and the Federal Bureau of Investigation.

11 (b) (1) As used in this section, “employer” means every person,
12 firm, association, partnership, or corporation offering or conducting
13 private school instruction on the elementary or high school level.

14 (2) As used in this section, “employment” means the act of
15 engaging the services of a person, who will have contact with
16 pupils, to work in a position at a private school at the elementary
17 or high school level on or after September 30, 1997, on a regular,
18 paid full-time basis, regular, paid part-time basis, or paid full-time
19 or part-time seasonal basis.

20 (3) As used in this section, “applicant” means any person who
21 is seriously being considered for employment by an employer.

22 (4) This section does not apply to a secondary school pupil
23 working at the school he or she attends or a parent or legal guardian
24 working exclusively with his or her children.

25 (c) (1) Upon receiving the identification cards, the Department
26 of Justice shall ascertain whether the applicant has been arrested
27 or convicted of any crime insofar as that fact can be ascertained
28 from information available to the Department of Justice and
29 forward the information to the employer submitting the fingerprints
30 no more than 15 working days after receiving the identification
31 cards. The Department of Justice shall not forward information
32 regarding criminal proceedings that did not result in a conviction
33 but shall forward information on arrests pending adjudication.

34 (2) Upon implementation of an electronic fingerprinting system
35 with terminals located statewide and managed by the Department
36 of Justice, the Department of Justice shall ascertain the information
37 required pursuant to this subdivision within three working days.
38 If the Department of Justice cannot ascertain the information

1 required pursuant to this subdivision within three working days,
2 the Department of Justice shall notify the employer submitting the
3 fingerprints that it cannot so ascertain the required information.
4 This notification shall be delivered by telephone or email to the
5 employer submitting the fingerprints. If the employer submitting
6 the fingerprints is notified by the Department of Justice that it
7 cannot ascertain the required information about a person, the
8 employer shall not employ that person until the Department of
9 Justice ascertains that information.

10 (3) The Department of Justice shall review the criminal record
11 summary it obtains from the Federal Bureau of Investigation to
12 ascertain whether an applicant for employment has a conviction,
13 or an arrest pending final adjudication, for any sex offense,
14 controlled substance offense, crime of violence, or serious or
15 violent felony. The Department of Justice shall provide written
16 notification to the private school employer only as to whether an
17 applicant for employment has any convictions, or arrests pending
18 final adjudication, for any of these crimes.

19 (d) An employer shall not employ a person until the Department
20 of Justice completes its check of the state criminal history file as
21 set forth in this section.

22 (e) (1) An employer shall not employ a person who has been
23 convicted of a violent or serious felony or a person who would be
24 prohibited from employment by a public school district pursuant
25 to any provision of this code because of his or her conviction for
26 any crime.

27 (2) A person who would be prohibited from employment by a
28 private school pursuant to paragraph (1) shall not, on or after July
29 1, 1999, own or operate a private school offering instruction on
30 the elementary or high school level.

31 (f) An employer shall request subsequent arrest service from
32 the Department of Justice as provided under Section 11105.2 of
33 the Penal Code.

34 (g) This section applies to any violent or serious offense that,
35 if committed in this state, would have been punishable as a violent
36 or serious felony.

37 (h) For purposes of this section, a violent felony is any felony
38 listed in subdivision (c) of Section 667.5 of the Penal Code and a
39 serious felony is any felony listed in subdivision (c) of Section
40 1192.7 of the Penal Code.

1 (i) Notwithstanding subdivision (e), a person shall not be denied
2 employment or terminated from employment solely on the basis
3 that the person has been convicted of a violent or serious felony
4 if the person has obtained a certificate of rehabilitation and pardon
5 pursuant to Chapter 3.5 (commencing with Section 4852.01) of
6 Title 6 of Part 3 of the Penal Code.

7 (j) Notwithstanding subdivision (e), a person shall not be denied
8 employment or terminated from employment solely on the basis
9 that the person has been convicted of a serious felony that is not
10 also a violent felony if that person can prove to the sentencing
11 court of the offense in question, by clear and convincing evidence,
12 that he or she has been rehabilitated for the purposes of school
13 employment for at least one year. If the offense in question
14 occurred outside this state, then the person may seek a finding of
15 rehabilitation from the court in the county in which he or she is a
16 resident.

17 (k) The commission shall make available to each private school
18 a listing of all credentialholders who have had final adverse action
19 taken against their credential. The information shall be identical
20 to that made available to public schools in the state. The
21 commission shall also send on a quarterly basis a complete and
22 updated list of all teachers who have had their teaching credentials
23 revoked or suspended, excluding teachers who have had their
24 credentials reinstated, or who are deceased.

25 (l) The Department of Justice may charge a reasonable fee to
26 cover costs associated with the processing, reviewing, and
27 supplying of the criminal record summary as required by this
28 section. The fee shall not exceed the actual costs incurred by the
29 Department of Justice.

30 (m) Where reasonable access to the statewide electronic
31 fingerprinting network is available, the Department of Justice may
32 mandate electronic submission of the fingerprints and related
33 information required by this section.

34 (n) All information obtained from the Department of Justice is
35 confidential. Agencies handling Department of Justice information
36 shall ensure the following:

37 (1) A recipient shall not disclose its contents or provide copies
38 of information.

(2) Information received shall be stored in a locked file separate from other files, and shall only be accessible to the custodian of records.

(3) Information received shall be destroyed upon the hiring determination in accordance with subdivision (a) of Section 708 of Title 11 of the California Code of Regulations.

(4) Compliance with destruction, storage, dissemination, auditing, backgrounding, and training requirements as set forth in Sections 700 to 708, inclusive, of Title 11 of the California Code of Regulations and Section 11077 of the Penal Code governing the use and security of criminal offender record information is the responsibility of the entity receiving the information from the Department of Justice.

~~SEC. 2. Section 56366.1 of the Education Code is amended to read:~~

~~56366.1. (a) A nonpublic, nonsectarian school or agency that seeks certification shall file an application with the Superintendent on forms provided by the department, and shall include all of the following information on the application:~~

~~(1) A description of the special education and designated instruction and services provided to individuals with exceptional needs if the application is for nonpublic, nonsectarian school certification.~~

~~(2) A description of the designated instruction and services provided to individuals with exceptional needs if the application is for nonpublic, nonsectarian agency certification.~~

~~(3) A list of appropriately qualified staff, a description of the credential, license, or registration that qualifies each staff member rendering special education or designated instruction and services to do so, and copies of their credentials, licenses, or certificates of registration with the appropriate state or national organization that has established standards for the service rendered.~~

~~(4) An annual operating budget.~~

~~(5) Affidavits and assurances necessary to comply with all applicable federal, state, and local laws and regulations that include criminal record summaries required of all nonpublic, nonsectarian school or agency personnel having contact with minor children under Section 44237.~~

~~(b) (1) The applicant shall provide the special education local plan area in which the applicant is located with the written~~

1 notification of its intent to seek certification or renewal of its
2 certification. The applicant shall submit on a form, developed by
3 the department, a signed verification by local educational agency
4 representatives that they have been notified of the intent to certify
5 or renew certification. The verification shall include a statement
6 that representatives of the local educational agency for the area in
7 which the applicant is located have had the opportunity to review
8 the application at least 60 calendar days before submission of an
9 initial application to the Superintendent, or at least 30 calendar
10 days before submission of a renewal application to the
11 Superintendent. The signed verification shall provide assurances
12 that local educational agency representatives have had the
13 opportunity to provide input on all required components of the
14 application.

15 (2) If the applicant has not received a response from the local
16 educational agency 60 calendar days from the date of the return
17 receipt for initial applications or 30 calendar days from the date
18 of the return receipt for renewal applications, the applicant may
19 file the application with the Superintendent. A copy of the return
20 receipt shall be included with the application as verification of
21 notification efforts to the local educational agency.

22 (3) The department shall mail renewal application materials to
23 certified nonpublic, nonsectarian schools and agencies at least 120
24 days before the date their current certification expires.

25 (e) If the applicant operates a facility or program on more than
26 one site, each site shall be certified.

27 (d) If the applicant is part of a larger program or facility on the
28 same site, the Superintendent shall consider the effect of the total
29 program on the applicant. A copy of the policies and standards for
30 the nonpublic, nonsectarian school or agency and the larger
31 program shall be available to the Superintendent.

32 (e) (1) Before certification, the Superintendent shall conduct
33 an onsite review of the facility and program for which the applicant
34 seeks certification. The Superintendent may be assisted by
35 representatives of the special education local plan area in which
36 the applicant is located and a nonpublic, nonsectarian school or
37 agency representative who does not have a conflict of interest with
38 the applicant. The Superintendent shall conduct an additional onsite
39 review of the facility and program within three years of the
40 effective date of the certification, unless the Superintendent

1 conditionally certifies the school or agency, or unless the
2 Superintendent receives a formal complaint against the school or
3 agency. In the latter two cases, the Superintendent shall conduct
4 an onsite review at least annually.

5 (2) In carrying out this subdivision, the Superintendent may
6 verify that the nonpublic, nonsectarian school or agency has
7 received a successful criminal background check clearance and
8 has enrolled in subsequent arrest notice service, pursuant to Section
9 44237, for each owner, operator, and employee of the nonpublic,
10 nonsectarian school or agency.

11 (f) The Superintendent shall make a determination on an
12 application within 120 days of receipt of the application and shall
13 certify, conditionally certify, or deny certification to the applicant.
14 If the Superintendent fails to take one of these actions within 120
15 days, the applicant is automatically granted conditional certification
16 for a period terminating on August 31 of the current school year.
17 If certification is denied, the Superintendent shall provide reasons
18 for the denial. The Superintendent shall not certify the nonpublic,
19 nonsectarian school or agency for a period longer than one year.

20 (g) Certification becomes effective on the date the nonpublic,
21 nonsectarian school or agency meets all the application
22 requirements and is approved by the Superintendent. Certification
23 may be retroactive if the nonpublic, nonsectarian school or agency
24 met all the requirements of this section on the date the retroactive
25 certification is effective. Certification expires on December 31 of
26 the terminating year.

27 (h) The Superintendent annually shall review the certification
28 of each nonpublic, nonsectarian school and agency. For this
29 purpose, a certified school or agency annually shall update its
30 application between August 1 and October 31, unless the state
31 board grants a waiver pursuant to Section 56101. The
32 Superintendent may conduct an onsite review as part of the annual
33 review.

34 (i) (1) The Superintendent shall conduct an investigation of a
35 nonpublic, nonsectarian school or agency onsite at any time without
36 prior notice if there is substantial reason to believe that there is an
37 immediate danger to the health, safety, or welfare of a child. The
38 Superintendent shall document the concern and submit it to the
39 nonpublic, nonsectarian school or agency at the time of the onsite

1 investigation. The Superintendent shall require a written response
2 to any noncompliance or deficiency found.

3 ~~(2) With respect to a nonpublic, nonsectarian school, the~~
4 ~~Superintendent shall conduct an investigation, which may include~~
5 ~~an unannounced onsite visit, if the Superintendent receives~~
6 ~~evidence of a significant deficiency in the quality of educational~~
7 ~~services provided, a violation of Section 56366.9, or~~
8 ~~noncompliance with the policies expressed by subdivision (b) of~~
9 ~~Section 1501 of the Health and Safety Code by the nonpublic,~~
10 ~~nonsectarian school. The Superintendent shall document the~~
11 ~~complaint and the results of the investigation and shall provide~~
12 ~~copies of the documentation to the complainant, the nonpublic,~~
13 ~~nonsectarian school, and the contracting local educational agency.~~

14 ~~(3) Violations or noncompliance documented pursuant to~~
15 ~~paragraph (1) or (2) shall be reflected in the status of the~~
16 ~~certification of the school, at the discretion of the Superintendent,~~
17 ~~pending an approved plan of correction by the nonpublic,~~
18 ~~nonsectarian school. The department shall retain for a period of~~
19 ~~10 years all violations pertaining to certification of the nonpublic,~~
20 ~~nonsectarian school or agency.~~

21 ~~(4) In carrying out this subdivision, the Superintendent may~~
22 ~~verify that the nonpublic, nonsectarian school or agency received~~
23 ~~a successful criminal background check clearance and has enrolled~~
24 ~~in subsequent arrest notice service, pursuant to Section 44237, for~~
25 ~~each owner, operator, and employee of the nonpublic, nonsectarian~~
26 ~~school or agency.~~

27 ~~(j) The Superintendent shall monitor the facilities, the~~
28 ~~educational environment, and the quality of the educational~~
29 ~~program, including the teaching staff, the credentials authorizing~~
30 ~~service, the standards-based core curriculum being employed, and~~
31 ~~the standard-focused instructional materials used, of an existing~~
32 ~~certified nonpublic, nonsectarian school or agency on a three-year~~
33 ~~cycle, as follows:~~

34 ~~(1) The nonpublic, nonsectarian school or agency shall complete~~
35 ~~a self-review in year one.~~

36 ~~(2) The Superintendent shall conduct an onsite review of the~~
37 ~~nonpublic, nonsectarian school or agency in year two.~~

38 ~~(3) The Superintendent shall conduct a followup visit to the~~
39 ~~nonpublic, nonsectarian school or agency in year three.~~

~~(k) (1) Notwithstanding any other law, the Superintendent shall not certify a nonpublic, nonsectarian school or agency that proposes to initiate or expand services to pupils currently educated in the immediate prior fiscal year in a juvenile court program, community school pursuant to Section 56150, or other nonspecial education program, including independent study or adult school, or both, unless the nonpublic, nonsectarian school or agency notifies the county superintendent of schools and the special education local plan area in which the proposed new or expanded nonpublic, nonsectarian school or agency is located of its intent to seek certification.~~

~~(2) The notification shall occur no later than the December 1 before the new fiscal year in which the proposed or expanding school or agency intends to initiate services. The notice shall include the following:~~

~~(A) The specific date upon which the proposed nonpublic, nonsectarian school or agency is to be established.~~

~~(B) The location of the proposed program or facility.~~

~~(C) The number of pupils proposed for services, the number of pupils currently served in the juvenile court, community school, or other nonspecial education program, the current school services including special education and related services provided for these pupils, and the specific program of special education and related services to be provided under the proposed program.~~

~~(D) The reason for the proposed change in services.~~

~~(E) The number of staff who will provide special education and designated instruction and services and hold a current valid California credential or license in the service rendered.~~

~~(3) In addition to the requirements in subdivisions (a) to (f), inclusive, the Superintendent shall require and consider the following in determining whether to certify a nonpublic, nonsectarian school or agency as described in this subdivision:~~

~~(A) A complete statement of the information required as part of the notice under paragraph (1):~~

~~(B) Documentation of the steps taken in preparation for the conversion to a nonpublic, nonsectarian school or agency, including information related to changes in the population to be served and the services to be provided pursuant to each pupil's individualized education program.~~

1 ~~(4) Notwithstanding any other law, the certification becomes~~
2 ~~effective no earlier than July 1 if the nonpublic, nonsectarian school~~
3 ~~or agency provided the notification required pursuant to paragraph~~
4 ~~(1).~~

5 ~~(l) (1) Notwithstanding any other law, the Superintendent shall~~
6 ~~not certify or renew the certification of a nonpublic, nonsectarian~~
7 ~~school or agency, unless all of the following conditions are met:~~

8 ~~(A) The entity operating the nonpublic, nonsectarian school or~~
9 ~~agency maintains separate financial records for each entity that it~~
10 ~~operates, with each nonpublic, nonsectarian school or agency~~
11 ~~identified separately from any licensed children's institution that~~
12 ~~it operates.~~

13 ~~(B) The entity submits an annual budget that identifies the~~
14 ~~projected costs and revenues for each entity and demonstrates that~~
15 ~~the rates to be charged are reasonable to support the operation of~~
16 ~~the entity.~~

17 ~~(C) The entity submits an entitywide annual audit that identifies~~
18 ~~its costs and revenues, by entity, in accordance with generally~~
19 ~~accepted accounting and auditing principles. The audit shall clearly~~
20 ~~document the amount of moneys received and expended on the~~
21 ~~education program provided by the nonpublic, nonsectarian school~~
22 ~~or agency.~~

23 ~~(D) The relationship between various entities operated by the~~
24 ~~same entity are documented, defining the responsibilities of the~~
25 ~~entities. The documentation shall clearly identify the services to~~
26 ~~be provided as part of each program, for example, the residential~~
27 ~~or medical program, the mental health program, or the educational~~
28 ~~program. The entity shall not seek funding from a public agency~~
29 ~~for a service, either separately or as part of a package of services,~~
30 ~~if the service is funded by another public agency, either separately~~
31 ~~or as part of a package of services.~~

32 ~~(2) For purposes of this section, "licensed children's institution"~~
33 ~~has the same meaning as it is defined by Section 56155.5.~~

34 ~~(m) The nonpublic, nonsectarian school or agency shall be~~
35 ~~charged a reasonable fee for certification. The Superintendent may~~
36 ~~adjust the fee annually commensurate with the statewide average~~
37 ~~percentage inflation adjustment computed for revenue limits of~~
38 ~~unified school districts with greater than 1,500 units of average~~
39 ~~daily attendance if the percentage increase is reflected in the district~~

revenue limit for inflation purposes. For purposes of this section, the base fee shall be the following:

(1) 1–5 pupils	\$ 300
(2) 6–10 pupils	500
(3) 11–24 pupils	1,000
(4) 25–75 pupils	1,500
(5) 76 pupils and over	2,000

The nonpublic, nonsectarian school or agency shall pay this fee when it applies for certification and when it updates its application for annual renewal by the Superintendent. The Superintendent shall use these fees to conduct onsite reviews, which may include field experts. A fee shall not be refunded if the application is withdrawn or is denied by the Superintendent.

(n) (1) Notwithstanding any other law, only those nonpublic, nonsectarian schools and agencies that provide special education and designated instruction and services using staff who hold a certificate, permit, or other document equivalent to that which staff in a public school are required to hold in the service rendered are eligible to receive certification. Only those nonpublic, nonsectarian schools or agencies located outside of California that employ staff who hold a current valid credential or license to render special education and related services as required by that state shall be eligible to be certified.

(2) The state board shall develop regulations to implement this subdivision.

(o) In addition to meeting the standards adopted by the state board, a nonpublic, nonsectarian school or agency shall provide written assurances that it meets all applicable standards relating to fire, health, sanitation, and building safety.

(p) (1) Notwithstanding subdivision (n) of Section 44237, and for purposes of enabling the Superintendent to carry out his or her duties pursuant to this section, a nonpublic, nonsectarian school or agency shall, upon demand, make available to the Superintendent evidence of a successful criminal background check clearance and enrollment in subsequent arrest notice service, conducted pursuant to Section 44237, for each owner, operator, and employee of the nonpublic, nonsectarian school or agency.

1 ~~(2) The nonpublic, nonsectarian school or agency shall retain~~
2 ~~the evidence and store it in a locked file separate from other files.~~

3 *SEC. 2. Section 56366.1 of the Education Code is amended to*
4 *read:*

5 56366.1. (a) A nonpublic, nonsectarian school or agency that
6 seeks certification shall file an application with the Superintendent
7 on forms provided by the ~~department~~ *department*, and *shall* include
8 *all of* the following information on the application:

9 (1) A description of the special education and designated
10 instruction and services provided to individuals with exceptional
11 needs if the application is for nonpublic, nonsectarian school
12 certification.

13 (2) A description of the designated instruction and services
14 provided to individuals with exceptional needs if the application
15 is for nonpublic, nonsectarian agency certification.

16 (3) A list of appropriately qualified staff, a description of the
17 credential, license, or registration that qualifies each staff member
18 rendering special education or designated instruction and services
19 to do so, and copies of their credentials, licenses, or certificates of
20 registration with the appropriate state or national organization that
21 has established standards for the service rendered.

22 (4) An annual operating budget.

23 (5) Affidavits and assurances necessary to comply with all
24 applicable federal, state, and local laws and regulations that include
25 criminal record summaries required of all nonpublic, nonsectarian
26 school or agency personnel having contact with minor children
27 under Section 44237.

28 (b) (1) The applicant shall provide the special education local
29 plan area in which the applicant is located with the written
30 notification of its intent to seek certification or renewal of its
31 certification. The applicant shall submit on a form, developed by
32 the department, a signed verification by local educational agency
33 representatives that they have been notified of the intent to certify
34 or renew certification. The verification shall include a statement
35 that representatives of the local educational agency for the area in
36 which the applicant is located have had the opportunity to review
37 the application at least 60 calendar days ~~prior to~~ *before* submission
38 of an initial application to the Superintendent, or at least 30
39 calendar days ~~prior to~~ *before* submission of a renewal application
40 to the Superintendent. The signed verification shall provide

1 assurances that local educational agency representatives have had
2 the opportunity to provide input on all required components of the
3 application.

4 (2) If the applicant has not received a response from the local
5 educational agency 60 calendar days from the date of the return
6 receipt for initial applications or 30 calendar days from the date
7 of the return receipt for renewal applications, the applicant may
8 file the application with the Superintendent. A copy of the return
9 receipt shall be included with the application as verification of
10 notification efforts to the local educational agency.

11 (3) The department shall mail renewal application materials to
12 certified nonpublic, nonsectarian schools and agencies at least 120
13 days before the date their current certification expires.

14 (c) If the applicant operates a facility or program on more than
15 one site, each site shall be certified.

16 (d) If the applicant is part of a larger program or facility on the
17 same site, the Superintendent shall consider the effect of the total
18 program on the applicant. A copy of the policies and standards for
19 the nonpublic, nonsectarian school or agency and the larger
20 program shall be available to the Superintendent.

21 (e) (1) Before certification, the Superintendent shall conduct
22 an onsite review of the facility and program for which the applicant
23 seeks certification. The Superintendent may be assisted by
24 representatives of the special education local plan area in which
25 the applicant is located and a nonpublic, nonsectarian school or
26 agency representative who does not have a conflict of interest with
27 the applicant. The Superintendent shall conduct an additional onsite
28 review of the facility and program within three years of the
29 effective date of the certification, unless the Superintendent
30 conditionally certifies the *nonpublic, nonsectarian* school or ~~agency~~
31 *agency*, or unless the Superintendent receives a formal complaint
32 against the *nonpublic, nonsectarian* school or agency. In the latter
33 two cases, the Superintendent shall conduct an onsite review at
34 least annually.

35 (2) *In carrying out this subdivision, the Superintendent may*
36 *verify that the nonpublic, nonsectarian school or agency has*
37 *received a successful criminal background check clearance and*
38 *has enrolled in subsequent arrest notice service, pursuant to*
39 *Section 44237, for each owner, operator, and employee of the*
40 *nonpublic, nonsectarian school or agency.*

1 (f) The Superintendent shall make a determination on an
2 application within 120 days of receipt of the application and shall
3 certify, conditionally certify, or deny certification to the applicant.
4 If the Superintendent fails to take one of these actions within 120
5 days, the applicant is automatically granted conditional certification
6 for a period terminating on August 31 of the current school year.
7 If certification is denied, the Superintendent shall provide reasons
8 for the denial. The Superintendent ~~may~~ shall not certify the
9 *nonpublic, nonsectarian* school or agency for a period of ~~not~~ longer
10 than one year.

11 (g) Certification becomes effective on the date the nonpublic,
12 nonsectarian school or agency meets all the application
13 requirements and is approved by the Superintendent. Certification
14 may be retroactive if the *nonpublic, nonsectarian* school or agency
15 met all the requirements of this section on the date the retroactive
16 certification is effective. Certification expires on December 31 of
17 the terminating year.

18 (h) The Superintendent annually shall review the certification
19 of each nonpublic, nonsectarian school and agency. For this
20 purpose, a certified *nonpublic, nonsectarian* school or agency
21 annually shall update its application between August 1 and October
22 31, unless the *state* board grants a waiver pursuant to Section
23 56101. The Superintendent may conduct an onsite review as part
24 of the annual review.

25 (i) (1) The Superintendent shall conduct an investigation of a
26 nonpublic, nonsectarian school or agency onsite at any time without
27 prior notice if there is substantial reason to believe that there is an
28 immediate danger to the health, safety, or welfare of a child. The
29 Superintendent shall document the concern and submit it to the
30 nonpublic, nonsectarian school or agency at the time of the onsite
31 investigation. The Superintendent shall require a written response
32 to any noncompliance or deficiency found.

33 (2) With respect to a nonpublic, nonsectarian school, the
34 Superintendent shall conduct an investigation, which may include
35 an unannounced onsite visit, if the Superintendent receives
36 evidence of a significant deficiency in the quality of educational
37 services provided, a violation of Section 56366.9, or
38 noncompliance with the policies expressed by subdivision (b) of
39 Section 1501 of the Health and Safety Code by the nonpublic,
40 nonsectarian school. The Superintendent shall document the

1 complaint and the results of the investigation and shall provide
2 copies of the documentation to the complainant, the nonpublic,
3 nonsectarian school, and the contracting local educational agency.

4 (3) Violations or noncompliance documented pursuant to
5 paragraph (1) or (2) shall be reflected in the status of the
6 certification of the *nonpublic, nonsectarian school or agency*, at
7 the discretion of the Superintendent, pending an approved plan of
8 correction by the nonpublic, nonsectarian school *or agency*. The
9 department shall retain for a period of 10 years all violations
10 pertaining to certification of the nonpublic, nonsectarian school
11 or agency.

12 (4) *In carrying out this subdivision, the Superintendent may*
13 *verify that the nonpublic, nonsectarian school or agency received*
14 *a successful criminal background check clearance and has enrolled*
15 *in subsequent arrest notice service, pursuant to Section 44237, for*
16 *each owner, operator, and employee of the nonpublic, nonsectarian*
17 *school or agency.*

18 (j) The Superintendent shall monitor the facilities, the
19 educational environment, and the quality of the educational
20 program, including the teaching staff, the credentials authorizing
21 service, the standards-based core curriculum being employed, and
22 the standard-focused instructional materials used, of an existing
23 certified nonpublic, nonsectarian school or agency on a three-year
24 cycle, as follows:

25 (1) The nonpublic, nonsectarian school or agency shall complete
26 a self-review in year one.

27 (2) The Superintendent shall conduct an onsite review of the
28 nonpublic, nonsectarian school or agency in year two.

29 (3) The Superintendent shall conduct a followup visit to the
30 nonpublic, nonsectarian school or agency in year three.

31 (k) (1) Notwithstanding any other law, the Superintendent shall
32 not certify a nonpublic, nonsectarian school or agency that proposes
33 to initiate or expand services to pupils currently educated in the
34 immediate prior fiscal year in a juvenile court program, community
35 school pursuant to Section 56150, or other nonspecial education
36 program, including independent study or adult school, or both,
37 unless the nonpublic, nonsectarian school or agency notifies the
38 county superintendent of schools and the special education local
39 plan area in which the proposed new or expanded nonpublic,

1 nonsectarian school or agency is located of its intent to seek
2 certification.

3 (2) The notification shall occur no later than the December 1
4 before the new fiscal year in which the proposed or expanding
5 school or agency intends to initiate services. The notice shall
6 include the following:

7 (A) The specific date upon which the proposed nonpublic,
8 nonsectarian school or agency is to be established.

9 (B) The location of the proposed program or facility.

10 (C) The number of pupils proposed for services, the number of
11 pupils currently served in the juvenile court, community school,
12 or other nonspecial education program, the current school services
13 including special education and related services provided for these
14 pupils, and the specific program of special education and related
15 services to be provided under the proposed program.

16 (D) The reason for the proposed change in services.

17 (E) The number of staff who will provide special education and
18 designated instruction and services and hold a current valid
19 California credential or license in the service rendered.

20 (3) In addition to the requirements in subdivisions (a) to (f),
21 inclusive, the Superintendent shall require and consider the
22 following in determining whether to certify a nonpublic,
23 nonsectarian school or agency as described in this subdivision:

24 (A) A complete statement of the information required as part
25 of the notice under paragraph (1).

26 (B) Documentation of the steps taken in preparation for the
27 conversion to a nonpublic, nonsectarian school or agency, including
28 information related to changes in the population to be served and
29 the services to be provided pursuant to each pupil's individualized
30 education program.

31 (4) Notwithstanding any other law, the certification becomes
32 effective no earlier than July 1 if the *nonpublic, nonsectarian*
33 school or agency provided the notification required pursuant to
34 paragraph (1).

35 (l) (1) Notwithstanding any other law, the Superintendent shall
36 not certify or renew the certification of a nonpublic, nonsectarian
37 school or agency, unless all of the following conditions are met:

38 (A) The entity operating the nonpublic, nonsectarian school or
39 agency maintains separate financial records for each entity that it
40 operates, with each nonpublic, nonsectarian school or agency

1 identified separately from any licensed children's institution that
2 it operates.

3 (B) The entity submits an annual budget that identifies the
4 projected costs and revenues for each entity and demonstrates that
5 the rates to be charged are reasonable to support the operation of
6 the entity.

7 (C) The entity submits an entitywide annual audit that identifies
8 its costs and revenues, by entity, in accordance with generally
9 accepted accounting and auditing principles. The audit shall clearly
10 document the amount of moneys received and expended on the
11 ~~education~~ *educational* program provided by the nonpublic,
12 nonsectarian school.

13 (D) The relationship between various entities operated by the
14 same entity are documented, defining the responsibilities of the
15 entities. The documentation shall clearly identify the services to
16 be provided as part of each program, for example, the residential
17 or medical program, the mental health program, or the educational
18 program. The entity shall not seek funding from a public agency
19 for a service, either separately or as part of a package of services,
20 if the service is funded by another public agency, either separately
21 or as part of a package of services.

22 (2) For purposes of this section, "licensed children's institution"
23 has the same meaning as it is defined by Section 56155.5.

24 (m) The *nonpublic, nonsectarian* school or agency shall be
25 charged a reasonable fee for certification. The Superintendent may
26 adjust the fee annually commensurate with the statewide average
27 percentage inflation adjustment computed for local control funding
28 formula allocations pursuant to Section 42238.02, as implemented
29 by Section 42238.03, of unified school districts with greater than
30 1,500 units of average daily attendance if the percentage increase
31 is reflected in the school district local control funding formula
32 allocation pursuant to Section 42238.02, as implemented by Section
33 42238.03, for inflation purposes. For purposes of this section, the
34 base fee shall be the following:

35		
36	(1) 1–5 pupils	\$ 300
37	(2) 6–10 pupils	500
38	(3) 11–24 pupils	1,000
39	(4) 25–75 pupils	1,500
40	(5) 76 pupils and over	2,000

1 The *nonpublic, nonsectarian* school or agency shall pay this fee
2 when it applies for certification and when it updates its application
3 for annual renewal by the Superintendent. The Superintendent
4 shall use these fees to conduct onsite reviews, which may include
5 field experts. ~~No~~ A fee shall *not* be refunded if the application is
6 withdrawn or is denied by the Superintendent.

7 (n) (1) Notwithstanding any other law, only those nonpublic,
8 nonsectarian schools and agencies that provide special education
9 and designated instruction and services ~~utilizing~~ *using* staff who
10 hold a certificate, permit, or other document equivalent to that
11 which staff in a public school are required to hold in the service
12 rendered are eligible to receive certification. Only those nonpublic,
13 nonsectarian schools or agencies located outside of California that
14 employ staff who hold a current valid credential or license to render
15 special education and related services as required by that state shall
16 be eligible to be certified.

17 (2) The *state* board shall develop regulations to implement this
18 subdivision.

19 (o) In addition to meeting the standards adopted by the *state*
20 board, a nonpublic, nonsectarian school or agency shall provide
21 written assurances that it meets all applicable standards relating
22 to fire, health, sanitation, and building safety.

23 (p) (1) *Notwithstanding subdivision (n) of Section 44237, and*
24 *for purposes of enabling the Superintendent to carry out his or*
25 *her duties pursuant to this section, a nonpublic, nonsectarian*
26 *school or agency shall, upon demand, make available to the*
27 *Superintendent evidence of a successful criminal background check*
28 *clearance and enrollment in subsequent arrest notice service,*
29 *conducted pursuant to Section 44237, for each owner, operator,*
30 *and employee of the nonpublic, nonsectarian school or agency.*

31 (2) *The nonpublic, nonsectarian school or agency shall retain*
32 *the evidence and store it in a locked file separate from other files.*